

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MARYANN MEADORS,

Plaintiff,

-against-

5:07-CV-0623 (LEK/VEB)

MICHAEL J. ASTRUE, *Commissioner
of Social Security,*

Defendant.

DECISION AND ORDER

This Court has received a Mandate from the United States Court of Appeals for the Second Circuit in the above captioned matter. Dkt. No. 28. Therein, the Second Circuit reviewed the Court's June 16, 2009 Judgement (Dkt. No. 22) affirming Defendant's denial of Plaintiff's application for Disability Insurance Benefits and dismissing her Complaint.

The Second Circuit has affirmed this Court's ruling upholding Defendant's determination that substantial evidence exists on the record supporting the Administrative Law Judge's ("ALJ") finding that Plaintiff's only severe impairment is lower back pain with lumbar radiculopathy. Mandate (Dkt. No. 28) at 5. The Second Circuit, however, has reversed the Court's finding that the ALJ gave appropriate weight to Plaintiff's treating physician's opinion and ordered vacated those portions of the ALJ's order giving that physician's opinion "little weight." *Id.* at 6, 8. Moreover, the Second Circuit found, contrary to this Court's Judgment, that the ALJ "did not properly evaluate the Appellant's testimony regarding her pain" and thus, it was "unable to give his calculation of

[Plaintiff's] RFC¹ meaningful review." Id. at 8. These errors by the ALJ, also prevented the Second Circuit from "reaching the question of whether the ALJ was required to consult a vocational expert," an assertion forming another basis of Plaintiff's appeal. Id. at 14. Based upon the above findings, the Second Circuit mandates that the case be remanded to the Secretary for further proceedings.

Accordingly, it is hereby

ORDERED, that consistent with the Second Circuit's Mandate (Dkt. No. 28), the Court's June 16, 2009 Judgement (Dkt. No. 22) in the above captioned matter is **AFFIRMED** with regard to its finding affirming the ALJ's limiting Plaintiff's severe impairment to her lower back pain with lumbar radiculopathy and is **REVERSED** with regard to its holding that the ALJ gave proper weight to Plaintiff's treating physician's opinion and applied the proper legal standard in assessing Plaintiff's credibility in his calculation of her RFC; and it is further

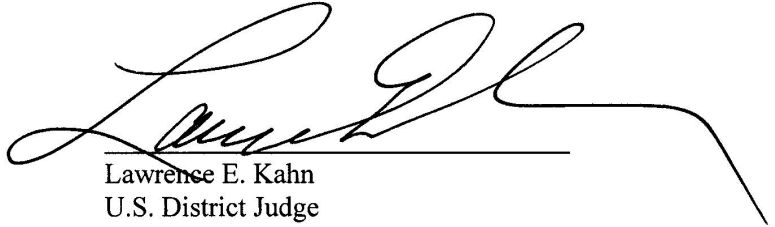
ORDERED, that pursuant to the Second Circuit's Mandate (Dkt. No. 28), this case is **REMANDED** so that the ALJ may afford Plaintiff's treating physician's opinion proper weight; employ the correct legal standard in assessing Plaintiff's subjective complaints of pain and calculation of her RFC; and, after conducting such inquiry determine whether consultation of a vocational expert is required; and it is further

ORDERED, that the Clerk of the Court shall serve a copies of this Order on all parties.

¹ "RFC" refers to Residual functional capacity.

IT IS SO ORDERED.

DATED: March 13, 2010
Albany, New York



Lawrence E. Kahn
U.S. District Judge